



December 3, 1999

Mr. Delmar L. Cain
General Counsel
Texas A&M University System
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OR99-3495

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "act"). Your request was assigned ID# 128688.

Prairie View A&M University (the "university"), a part of the Texas A&M University System, received a request for information relating to the list of books required or recommended for each course for the Fall 1999 semester. You indicate that the university will release some of the requested information, but that it is not in possession of information responsive to the specific portions of the request seeking each book title and author as requested by the professor, the corresponding ISBN numbers, the required/optional status of each book, and the edition, copyright date, and publisher information for each book. You say, rather, that such information is in the possession of Follet, Inc. (the "company"), a company which supplies books for the university under contract with the university. You advise further that the company has notified the university that it considers such information to be protected from disclosure under sections 552.104 and 552.110 of the Government Code.

The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental

body owns or has a right of access to the information. *See*, Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Public Information Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Public Information Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 (1989).

In its letter to this office, the company explains that it operates under contract with the university, and that it does not receive public funds, but rather pays the university a percentage of its revenues as "rent." The contract requires that the company keep records of monthly sales and revenues and make such information available to the university, but does not require the company to maintain the records at issue here or provide the university access to them.

In our opinion, the information maintained by the company is not "maintained" or prepared for the university such as to be subject to the act. *See* Gov't Code § 552.002 (definition of "public information" subject to act). We conclude, therefore, that the requested list of books, which is maintained by the company, is not subject to disclosure under the Public Information Act. Since we have determined that the information maintained by the company is not subject to the act, we need not address the claims for withholding the information under sections 552.104 and 552.110 of the act.

We do note that, although the information at issue is unavailable to the requestor from the information maintained by the company, it appears the company compiles such information through contact with individual university departments and faculty members. Thus, it is possible that information concerning the required books for each class may indeed exist at the university. If the information at issue exists in any form at the university, the university must make it available to the requestor. State agency records, including those of institutions of higher education, must be retained in accordance with retention schedules approved under section 441.185 of the Government Code. *See also, id.*, §§ 441.180(9) (definitions), 441.187 (destruction of records). A governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 128688

Encl. Submitted documents

cc: Ms. Vivek Chopra
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(w/o enclosures)